IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..02..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE C.NAGAPPAN

W.A.No.2177 of 2003 & W.P.No.21127 of 2004
and
W.A.M.P.No.1009 of 2004 & W.P.M.P.No.25482 of 2004

---

A.S.Balaraman Thampi ..Appellant in the Writ Appeal &
4th respondent in the Writ Petition.

Vs.

1.S.Michael King ..1st respondent in the Writ Appeal &
Petitioner in the Writ Petition.

2. The Union of India,
rep. by its Secretary to Government,
Ministry of Petroleum and Natural Gas,
New Delhi.

3. Oil Selection Board (South),
rep. by its Chairman,
Indian Oil Bhavan,
8th Floor, 139, Nungambakkam High Road,
Chennai - 600 034.

4. Indian Oil Corporation Ltd.,
(Marketing Division),
rep. by its General Manager,
Tamil Nadu State Office,
Indian Oil Bhavan,
8th Floor, 139, Nungambakkam High Road,
Chennai - 600 034. ..Respondents 2,3 & 4 in the W.A.
& respondents 1,2 & 3 in the W.P.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

PRAYER: Writ Appeal filed against the order of the learned single Judge dated 08.04.2003 passed in W.P.No.20284/1999, as stated therein.

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus, calling for the records on the Enquiry officer's report dt. 1.12.03 submitted by the 3rd respondent in pursuant to this Hon'ble Courts' order dt. 8.4.03 in WP No. 20284/99 and quash the said enquiry report and consequently direct the 2nd and 3rd respondents to grant the said LPG Indane distributionship for Kanyakumari – Sucindram Area to the petitioner herein.

---

Mr.R.Thiagarajan, Senior Counsel :: For Appellant in the W.A.
For Mr.K.N.Thambi & for 4th respondent in the W.P.

Mr.Arvind P.Datar, Senior Counsel :: For Petitioner in the W.P.
For Mr.R.Bharanitharan & for 1st respondent in the W.A.

Ms. Meera Gupta :: For R4 in the Writ Appeal &
Mr.Saleem for M/s.Anand, Abdul & Vinod ::For R3 in the Writ Petition.

---

J U D G M E N T

THE HON'BEL THE CHIEF JUSTICE

The writ appeal has been filed against the impugned order of the learned single Judge dated 08.04.2003 passed in W.P.No.20284 of 1999. As the present Writ Petition in W.P.No.21127 of 2004 is connected with the writ appeal, both of them are disposed of by this common judgment.

2. Heard learned counsel for the parties and perused the records.

3. It appears that an advertisement was published in the year 1985 by the Indian Oil Corporation Limited inviting applications for Indane Gas Distributorship in Suchindrum area of Kanyakumari District. The appellant, 1st respondent, and many others applied for the said distributorship, and an interview was held for the selection.

4. A panel of three candidates from out of the interviewed candidates was prepared for selection of one of them for the distributorship. In the panel, the appellant stood first, one Bhoothalingam stood second and one Dhasan stood third. The first respondent/writ petitioner was not even empanelled, as he

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appeared to have scored poor marks. The appellant, an Engineering Graduate was selected and appointed for the distributorship, and commenced business in the year 1988. The writ petitioner filed W.P.No.3128 of 1988 against the appellant and others for cancellation of the said grant of distributorship, and to award the same to the petitioner. Among the grounds taken in that writ petition by the petitioner/1st respondent was that the annual income of the appellant's family for the relevant period (1984-85) had exceeded the limit of Rs.24,000/-. It appears that the Court got the records of the School pertaining to the salary of the Appellant's father and scrutinised the same, and by order dated 2.2.1990 the learned single Judge dismissed that writ petition.

5. Against the said order dated 2.2.1990, the first respondent filed a writ appeal being W.A.No.212 of 1990, which was dismissed on 27.02.1990 with the observation that it was upto the first respondent to approach the learned single judge in W.P.No.3128 of 1988 with regard to the annual family income of the appellant herein if his opinion was formed as a result of any mistaken impression gathered by him on account of non-disclosure of the relevant facts or not drawing his attention to any relevant fact. The Division Bench gave liberty to the appellant therein to approach the learned single Judge for this purpose after due notice to the other side.

6. Subsequent to the judgment of the Division Bench dated 27.02.1990, the first respondent filed Review Petition No.5011 of 1990 in W.P.No.3128 of 1988 to review the order dated 02.02.1990 in W.P.No.3128 of 1988 and the said review petition was dismissed by the learned single Judge on 02.04.1990. The learned single Judge who dismissed the review petition stated in his order dated 02.04.1990 that no fresh material had been produced before him warranting review of his earlier order.

7. Against the dismissal of the aforesaid Review Petition No.5011 of 1990, the first respondent filed another writ appeal being W.A.No.510 of 1990 which was dismissed by judgment dated 31.07.1990. In the said judgment the Division Bench observed:-

> "Para-2. Mr.R.Muthukumaraswamy, learned counsel for the appellant, took pains to say that there is an acquittance roll obtained from the management of the Institution where the father of the third respondent is working and that shows his income for the period in question as amounting to Rs.25,933/- and even otherwise the statement of income given by the third respondent and which was annexed to his application, showed the family income as Rs.23,820/- and the field investigation report disclosed an annual income of Rs.1,500/- from the land possessed by the family of the third respondent and hence, it must be without any ambiguity, held that the family income of the third respondent exceeded Rs.24,000/- annually. This is in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the field of facts. It is not as if respondents 1 and 2 are bound by what is declared in the statement of income which gets annexed to the application. They are bound to make their own enquiry as they did in the present case and the enquiry revealed certain result, which they took as the basis on the question. The result is the income of the family of the third respondent was only Rs.21,656/- annually. Equally so the field investigation showed that the income from the land was Rs.1,500/- annually. It is not possible to dissect the result of the field investigation and accept one aspect and reject the other. No warrant has been made for doing so. No factor vitiating the field investigation has been demonstrated. If that has formed the guidelines for the respondents 1 and 2 to hold that the income of the family of the third respondent was below Rs.24,000/- and if that decision has been accepted by the learned single Judge and further the learned single Judge did not find a warrant to disturb that decision even though review was sought for, that must remain, and we do not think we should persuade ourselves, exercising appellate powers to disturb that factual basis. This writ appeal is dismissed. No costs."

8. Against the dismissal of the said W.A.No.510 of 1990, the first respondent filed S.L.P. before the Supreme Court, which was also dismissed in limine. Thus, the order of the Division Bench dated 31.07.1990 passed in W.A.No.510 of 1990 has become final. Relevant part of the said order has been extracted above, and a perusal of the same shows that the Division Bench has again held that the annual income of the family of the 3rd respondent in that appeal (the appellant herein) was below Rs.24,000/-.

9. We would have thought that after the judgment dated 31.07.1990 in Writ Appeal No.510 of 1990, the dispute regarding the validity of the grant of distributorship to the appellant had come to an end. However, it appears that the present first respondent filed W.P.No.2157 of 1991 against the present appellant and respondents 2,3 and 4 for a direction to the 2nd respondent and the Divisional Manager, Madurai Divisional Office, IOC Ltd. to cancel the grant of distributorship to the present appellant and to award it to the petitioner. In our opinion, this second writ petition was not even maintainable as it was barred by the principle of res judicata/constructive res judicata. The petition was rightly dismissed on 20.2.1991 by a learned single Judge of this Court. The learned single Judge observed that the petitioner was only trying to re-open a stale matter. Thereafter, on 18.01.1993, the first respondent herein gave an application to the Superintendent of Police, Kanyakumari District and also an application dated 22.07.1994 to the Indian Oil Corporation in the matter. After about five years, the first respondent gave an application dated 28.04.1999 to the Secretary, Ministry of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petroleum and thereafter in August 1999 the first respondent filed a Writ Petition in W.P.No.13591 of 1999 for a writ of mandamus to consider his grievance in his application dated 22.07.1994 and 28.04.1999. It appears that without notice to the present appellant the Court passed an order dated 10.08.1999 directing the Secretary, Ministry of Petroleum and Chemicals to consider and pass appropriate orders on the first respondent's representations dated 22.07.1994 and 28.04.1999. The present 4th respondent passed an order rejecting the said representations. Thereafter, the first respondent filed W.P.No.20284 of 1999 for a writ of certiorarified mandamus calling for the records of the 4th respondent dated 22.10.1994 and for quashing the same, and canceling the distributorship granted to the appellant and to consider the name of the first respondent. By order dated 08.04.2003, the learned single Judge set aside the aforesaid order dated 22.10.1999 of the 4th respondent and directed him to appoint a competent officer as the enquiry officer for holding an enquiry to decide on the representations dated 22.07.1994 and 28.04.1999. Against the aforesaid order dated 08.04.2003 passed in W.P.No.20284 of 1999 the present writ appeal has been filed. In the meantime, pursuant to the order passed in W.P.No.20284 of 1999 and the interim order in the present writ appeal, the Indian Oil Corporation conducted an enquiry and filed its report dated 01.12.2003, rejecting the representations of the first respondent. Thereafter, the first respondent filed W.P.No.21127 of 2004, the present writ petition, praying for a certiorarified mandamus to quash the said report dated 01.12.2003 and to direct the respondents 3 and 4 to grant distributorship to him.

10. In our opinion, the proceedings initiated by the first respondent namely, S.Michael King after the judgment of the Division Bench dated 31.07.1990 in W.A. No.510 of 1990 were a clear abuse of the process of the Court.

11. As can be seen from a narration of the above facts, after the dismissal of Writ Appeal No.510 of 1990 by order dated 31.07.1990, the first respondent had filed S.L.P. before the Supreme Court, which was also dismissed. The Division Bench in its judgment dated 31.07.1990 in W.A.No.510 of 1990 had considered the allegation that the annual income of the appellant's family exceeds Rs.24,000/-and it had come to the conclusion that the allegation had not been established. We would have thought that the matter would have ended there. However, it appears that the first respondent was bent upon perpetuating the litigation even after losing before the Division Bench of this Court and the Supreme Court. This is a clear case of abuse of the process of the Court by the first respondent – S.Michael King. The dockets of this Court are already overful, and we cannot permit the luxury of fresh rounds of litigation after a controversy has been finally adjudicated by the Court.

12. We are further of the opinion that the learned single Judge who passed the order dated 10.08.1999 in W.P.No.13591 of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1999 was not justified in passing that order. It may be that the learned single Judge who passed the said order dated 10.08.1999 had not been informed of the previous developments, particularly, of the fact that the earlier litigation had come to an end by the judgment of the Division Bench dated 31.07.1990 in W.A.No.510 of 1990 against which S.L.P. had also been filed and dismissed by the Supreme Court. Nevertheless, in our opinion, before passing the order dated 10.08.1999 the learned single Judge should have issued notice to respondent-2 in that petition (the present appellant) and to the Indian Oil Corporation. Without issuing such notice, the direction to decide the representation of the writ petitioner in that case (the first respondent in the present writ appeal) was not justified. Had notice been issued to the respondents by the learned single judge in the aforesaid writ petition before passing the order dated 10.08.1999, the respondents in that writ petition would have informed about the previous developments to the learned single Judge, but, no such notice was issued to them. In our opinion, the writ petition in W.P.No.13591 of 1999 was a clear abuse of the process of the Court by the first respondent- S.Michael King. He obtained the order dated 10.08.1999 in that writ petition by concealment of facts.

13. As regards the impugned order dated 08.04.2003 in W.P.No.20284 of 1999 we are of the opinion that the said order was not justified and cannot be sustained. As already mentioned above, the litigation between the parties had come to an end by the judgment of the Division bench dated 31.07.1990 in W.A.No.510 of 1990, against which S.L.P. was filed and dismissed by the Supreme Court. We, therefore, fail to see how another round of litigation could have been entertained after the judgment of the Division Bench dated 31.07.1990 in the aforesaid W.A.No.510 of 1990.

14. A perusal of the impugned judgment dated 08.04.2003 clearly shows that the learned single Judge has not even taken notice of the fact that the litigation between the parties had come to an end with the dismissal of W.A.No.510 of 1990 by a Division Bench of this Court on 31.07.1990. Hence, in our opinion, no further litigation could have been entertained as that would be barred by the principle of res judicata / constructive res judicata. The principle of res judicata / constructive res judicata is a principle of high public policy based on the maxim "interest republicae ut sit finis litium", which means that it is in the interest of the republic that there should be an end to the litigation. The matter had already been concluded by the judgment of the Division Bench in W.A.No.510 of 1990 dated 31.07.1990, and the S.L.P filed against the same had also been dismissed by the Supreme Court. We fail to see how the matter could be re-opened thereafter.

15. In a very recent decision of the Supreme Court in U.P.State Transport Corporation v. State of U.P (AIR 2005 SC

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

446), the applicability of the principle of res judicata in writ proceedings has been reiterated, and it was observed (vide paragraphs 10 & 11): -

> " In Daryao & others v. State of U.P. & others, AIR 1960 SC 1457, a Constitution Bench considered the application of rule of res judicata in writ petitions. It was held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. Similarly, in Devilal Modi v. Sales Tax Officer, AIR 1965 SC 1150, which is also a decision by a Constitution Bench, it was held that it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. It was further held that considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by the Supreme Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration. In Direct Recruit class II Engineering Officer's Association v. State of Maharashtra and others, 1990 (2) SCC 715, the Constitution Bench emphasized that the binding character of judgments of Courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.
>
> The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings (See Satyadhan v. Smt.Deorajin Devi, AIR 1960 SC 941)"

16. In the aforesaid decision in U.P.State Transport Corporation v. State of U.P (supra), the facts were that the Supreme Court had recorded a clear finding that a draft scheme for nationalization of a route had not lapsed under Section 100 (4) of the Motor Vehicles Act, 1988. Subsequently, it appears that the Allahabad High Court reopened the issue and held that the draft scheme had lapsed. The Supreme Court, in these circumstances, observed that its earlier decision that the draft scheme had not lapsed was res judicata, and it was not open to the High Court to reopen the issue and record a contrary finding.

17. Of course, if after a judgment some fresh facts come to light and are brought to the notice of the court which gave the judgment, and which clearly indicate that the judgment was obtained by fraud or collusion, it is open for the Court to re-consider its verdict. But, then an application for review/re-call should have been filed in the very same Writ Appeal No.510 of 1990, which had been dismissed on 31.07.1990. It was not open to the first respondent to begin a fresh round of litigation by filing W.P.No.2157 of 1991, W.P.No.13591 of 1999, or W.P.No.20284 of 1999. All these writ petitions were wholly uncalled for and ought not to have been entertained by the Court.

18. Moreover, even a review/re-call application alleging that a verdict had been obtained by fraud or collusion cannot be filed belatedly at any time at the sweet will of the petitioner. In the present case, the W.P.No.13591 of 1999 and W.P.No.20284 of 1999 were filed highly belatedly and should have been dismissed on the ground of laches.

19. In the result the present writ appeal is allowed. W.P.No.21127 of 2004 praying for the quashing of the report dated 1.12.2003 is also a clear abuse of the process of the Court for the reasons already given above, and therefore, the said writ petition is hereby dismissed.

20. We are of the clear opinion that the 1st respondent has abused the process of the Court by repeatedly filing writ petitions which were not maintainable (as mentioned above). Hence, we direct that the 1st respondent - S.Michael King to pay special costs of Rs.10,000/- to the appellant in the present writ appeal ( A.S.Balaraman Thambi) within two months from today,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

failing which it will be recovered as arrears of land revenue from the first respondent and paid to the appellant.

sm/pv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:-

1. The Secretary to Government,
   Union of India,
   Ministry of Petroleum and Natural Gas,
   New Delhi.

2. The Chairman
   Oil Selection Board (South),
   Indian Oil Bhavan,
   8th Floor, 139, Nungambakkam High Road,
   Chennai - 600 034.

3. The General Manager,
   Indian Oil Corporation Ltd.,
   (Marketing Division),
   Tamil Nadu State Office,
   Indian Oil Bhavan,
   8th Floor, 139, Nungambakkam High Road,
   Chennai - 600 034.

4. S. Michael King
   13/45, Fathima Road,
   Azhagappapuram (Post)
   Kanyakumari District.
   PIN - 629 401.

+ 1 CC to Mr.R. Bharanidharan, Advocate SR No 8343

+ 1 CC to Mrs. Meera Gupta, Advocate SR No 8154

+ 2 Ccs to Mr.K.N. Thambi, Advocate SR Nos. 8123 & 8124

+ 1 CC to M/s Anand, Abdul & Vinodh Associates, Advocate SR No. 7898

WEB COPY

Judgment in
W.A.No.2177 of 2003
&
W.P.No.21127 of 2004

ra (co)
bp

21..02..2005.

https://hcservices.ecourts.gov.in/hcservices/